IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA No. 191 of 1995.

Date of decision 1.5.2007.

Devi Ram ….**Appellant.**

Versus

State of H.P. and another ……**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant	**Mr. Bhupender Gupta, Sr. Advocate, with Mr. Ajeet Jaswal, Advocate.**
For Respondent No. 1:	**Mr. Rajan Dewan, Addl. AG.**
For respondent No. 2:	**Mr. K.D.Sood, Advocate.**

Dev Darshan Sud, J. (Oral).

The appellant is aggrieved by the judgment and decree of the learned appellate Court, affirming the judgment and decree of the learned trial Court whereby the suit of the plaintiff was dismissed, which suit was instituted in a representative capacity. The

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

grievance of the plaintiff was that the nautor grant which had been made in favour of defendant No. 2 Smt. Kali was against the provisions of the Forest Conservation Act, 1980 and the Himachal Pradesh Nautor Rules. Plaintiff had claimed *bartandari* rights on the land on which the grant was made and opposed allotment of the land to respondent No. 2 on the allegations that they were exercising such rights which had been recorded in the settlement for the year 1911-12.

The Courts below have concurrently held that the grant in favour of defendant No. 2 Smt. Kali was made in accordance with law. However, while disposing of the appeal, learned appellate Court observed in para 17 that such rights of the plaintiff have been recorded in the forest settlement report which has not been brought on record and therefore, no claim qua such rights can be made. Learned counsel for the appellant submits that this finding of the learned appellate Court is without any material on record and that it would affect the rights of the entire village in future also and would be a hindrance in the usage/ assertion of their rights. He submits

that the generalization by which the rights of the appellant have been negated for all times to come is not justified, nor required for the adjudication of the controversy in the appeal.

I have heard the learned counsel for the parties.

This appeal is disposed of with the direction that grant in favour of defendant No. 2 Smt. Kali is kept intact, as the same is in accordance with law and the learned Courts below have correctly appreciated the evidence on record. The provisions of the Forest Conservation Act also cannot be invoked as the grant has been made much prior in point of time to the enactment. There is no perversity or error in the findings of the learned Courts below. However, the observations of the learned appellate Court to the effect that the appellant was not exercising any rights around the land subject matter of the grant are not correct. Such observations were not required to be made while considering the question of legality of the grant. These observations will not be construed to mean that the plaintiff has no *bartandari* rights. The

plaintiff may not have placed adequate material on the record, but the observation would not be construed as a finding which would render it as a judgment in rem. In the circumstances, this appeal is partly allowed. The observations made by the learned appellate Court in para 17 of the judgment would not affect the rights of the plaintiff in future. It is, however, clarified that the grant in favour of defendant No. 2 would remain intact and will not be affected in any manner. There shall be no order as to costs.

May 1, 2007(PC). **(Dev Darshan Sud), J.**